IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 15666 of 2004

Between:

Dr. V. Krishna Murthy, S/o. Late Sri Kotaiah Naidu,
Hindu, R/o. M.E. Colony, Plot No.2, D.No. 40-27-4A, Pennamaneni Poly Clinic Road,
Vijayawada-10, Krishna District.

..... PETITIONER

AND

1 The Director, Drugs Control Administration Hyderabad.
2 The Assistant Director, Drugs Control Administration Regional Office, Vijayawada.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ Order or direction more particularly one in the nature of WRIT OF MANDAMUS, declaring the orders passed by the 1st respondent in his Proceedings Rc.No. 2422/M38/2004 dt. 27-3-2004 and the further order passed in Proc.Rc.No.8699/M38/2002 dated 9-8-2004 as illegal, unjust, contrary to Rule 122-0 of the Drugs and Cosmetic Rule 1945 and violation of principles of natural justice and consequently set aside them.

Counsel for the Petitioner:MR.P.V.VIDYASAGAR

Counsel for the Respondents: GP FOR MEDICAL HEALTH & FAMI.WELFARE

The Court made the following:

ORDER:

Heard both sides and at their request the main Writ Petition itself is taken up for disposal.

Petitioner herein who is a Doctor by profession and who is running Blood Bank and Diagnostic Laboratory at Vijayawada, filed this Writ Petition inter alia, challenging the impugned proceedings, dated 27.3.2004 and also further orders passed on 9.8.2004, wherein the licence granted for running the said Blood Bank and Diagnostic Laboratory, issued under Rule 122-0 of the Drugs and Cosmetic Rules 1945, was sought to be cancelled, as illegal and void.

The main grievance of the petitioner is that he being a doctor had obtained licence as long back in the year 2001 under the name and style of 'Sivani Blood Bank and Diagnostics' and running the same with effect form 30th May without any complaint whatsoever. In fact, it is stated that he is personally running the said blood bank and there is no other blood bank in Vijayawada City. Subsequently, in pursuance of the inspection made by the Drug Inspector, Vijayawada Zone-II on 24.2.2004, on the allegations of certain irregularities, proceedings have been initiated and consequently, impugned orders were issued asking the petitioner to stop all the blood bank activities immediately. The complaint of the petitioner is that as per Rule 122-0 of the Drugs and Cosmetic Rules, 1945, the licensing authority

should not have passed the orders without giving an opportunity to the petitioner. The allegation made is that the respondents have not followed the procedure as contemplated under Rule 122-0, by providing sufficient opportunity and also holding an enquiry in respect of certain allegations, and therefore, the entire impugned proceedings are totally vitiated violative of the principles of natural justice.

The learned Government Pleader appearing on behalf of the respondents submits that even at the stage of inspection, the Inspector did put on notice to the petitioner in respect of the allegations and the petitioner had also submitted a detailed explanation on 29.03.2004, and therefore, no grievance can be made out for notice and opportunity.

Considering the submissions made on either side and also after perusing the entire material on record, especially that of the impugned order dated 9.8.2004, though it refers to the explanation filed on 29th March 2004 by the petitioner, there is no reference nor any mention in regard to the notice being issued or conducting enquiry in respect of said allegations. The only reliance sought to be placed by the respondents is the proceedings dated 27.3.2004, wherein a positive direction was given against the petitioner to stop all the Blood Bank activities under Drug licence of Form-28(d) till the petitioner rectifies the defects mentioned therein and submits compliance report. According to Rule 122-0, notice and enquiry have to be proceeded before any such final orders are passed. But here admittedly no such notice has been issued to the petitioner nor any enquiry was conducted therein.

Therefore, the Writ Petition is allowed and the impugned proceedings dated 27.3.2004 and 9.8.2004 are set aside. It shall be open for the respondents herein to pass orders on merits after giving sufficient opportunity to the petitioner and also after conducting a detailed enquiry as contemplated under the Rules.

Ka 27.10.2004.

To

1 The Director, Drugs Control Administration Hyderabad.
2 The Assistant Director, Drugs Control Administration Regional Office, Vijayawada.

3. 2CCs to G.P. for Medical Health and Family Welfare, High Court Buildings, High Court of A.P., Hyderabad. (OUT)

4. 2CD copies